

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA**

**TERRY HARRIS, DOROTHY
WATFORD, ET AL.,**

Plaintiffs,

VS.

JOSEPH BORG,

Defendant.

CASE NO.: 2:05CV1083-MEF

MOTION TO DISMISS CLASS ACTION CLAIMS

COMES NOW the Defendant, Joseph Borg, and moves the court to dismiss the Plaintiffs' class action allegations. As grounds, therefore, Defendant shows as follows:

1. The Report of Parties' Discovery Planning Meeting provides that all parties should be joined by June 20, 2006 [paragraphs 4C and 4D] and that discovery on class certification issues, "[S]hall be completed by August 1, 2006 [paragraph 3I]."
2. No discovery on class certification issues has been filed by Plaintiffs and no effort has been made by either of the Plaintiffs to prove any of the necessary elements for a class.
3. Other than by conclusory, non-specific, generic allegations containing no facts, Plaintiffs' complaint does not describe any appropriate class or allege the factual elements necessary for class certification, the existence of which is denied by the Defendant [Defendant's Response, paragraphs 5 - 10].
4. The Plaintiffs' underlying claims, denial of due process, are individual claims which are not an appropriate basis for class treatment.

2. No discovery on class certification issues has been filed by Plaintiffs and no effort has been made by either of the Plaintiffs to prove any of the necessary elements for a class.

3. Other than by conclusory, non-specific, generic allegations containing no facts, Plaintiffs' complaint does not describe any appropriate class or allege the factual elements necessary for class certification, the existence of which is denied by the Defendant [Defendant's Response, paragraphs 5 - 10].

4. The Plaintiffs' underlying claims, denial of due process, are individual claims which are not an appropriate basis for class treatment.

5. It would be unjust to require the Defendant to “prove the negative” and show the absence of any conceivable class when the Plaintiffs have made no effort to prove the existence of any appropriate class.

THEREFORE, the Defendant asks the Court to dismiss all class allegations and claims from Plaintiffs’ complaint.

Respectfully submitted,

s/Bruce J. Downey, III
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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing pleading upon all counsel of record listed hereinbelow, placing a copy of same in the United States mail, postage prepaid and a copy of the pleading without enclosures by facsimile, properly addressed, this the 10th day of August, 2006:

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s/Bruce J. Downey, III
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